LeadingAge Policy and Procedures for Responding to Allegations of Research Misconduct

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Approved by _____ Date _____

LeadingAge
Policy and Procedures for Responding to Allegations of Research Misconduct

I. Introduction

A. General Policy

At the heart of all scientific endeavor, regardless of discipline or institution, is the need for scientists to be honest with respect to their own actions in scientific research and in their responses to the actions of other scientists. This applies to the whole range of scientific work, including experimental design, generating and analyzing data, publishing results, and acknowledging the direct and indirect contributions of colleagues, collaborators and others. All individuals to whom this statement applies must not commit any act of scientific misconduct.

B. Scope

This statement of policy and procedures applies to any person who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with LeadingAge including any temporary members of the research staff and other trainees. This policy applies with equal force to unfunded research, research funded by LeadingAge, and research funded by an external entity (federal entities and foundations). This policy applies to the conduct of research or research training, reporting to sponsors, presentation or publication of results, and the process of applying for sponsored funding.

Under this Policy, Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- Fabrication is making up data or results and recording or reporting them.
- Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- Research misconduct does not include honest error or differences of opinion.
- This policy will normally be followed when an allegation of possible misconduct in research is received by a LeadingAge official. However, when allegations of misconduct involve research that is funded by outside funding sources or government agencies, and those funding sources specify research misconduct policies that differ from this policy or that have a designated Oversight Body (such as the US Public Health Service) then the particular funding source or Oversight Body's policy will be applied.

This statement of policy and procedures applies to allegations of research misconduct that occurred within six years of the date LeadingAge received the allegation.

II. Definitions

Allegation means a disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to an institutional or LeadingAge official.

Community Member is a person who is employed by, is an agent of, or is affiliated by contract or agreement with LeadingAge.

Complainant means a person who in good faith makes an allegation of research misconduct.

Deciding Official (DO) means the LeadingAge official who makes final determinations on allegations of research misconduct and any institutional administrative actions. The Deciding Official is the President & CEO.

Evidence means any document, tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.

Good faith as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this part. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

Investigation means the formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct which may include a recommendation for other appropriate actions, including administrative actions.

Oversight Body means the administrative office, department or committee associated with the sponsoring agency that supported the research project(s) under investigation that monitors and regulates the use of funding and equipment from that sponsoring agency. For any institute under the Public Health Service, for example, the oversight body would be the Office of Research Integrity. For internally funded, or unfunded research, the oversight is provided by LeadingAge's Chief Operating Officer.

Notice means a written communication served in person, sent by mail or its equivalent to the last known street address, facsimile number or email address of the addressee.

Person means any individual, corporation, partnership, institution, association, unit of government, or legal entity, however organized.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research means a systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanism relating to, biological causes, functions or effects, diseases, treatments, or related matters to be studied.

Research Integrity Officer (RIO) means the LeadingAge official responsible for: (1) assessing allegations of research misconduct to determine if they warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified; (2) overseeing inquires and investigations; and (3) the other responsibilities described in this policy. The Research Integrity Officer chairs the LeadingAge Responsible Conduct of Research Committee and is the LeadingAge VP, Employee Experience.

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to a funder by a respondent in the course of the research misconduct proceeding.

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

Responsible Conduct of Research (RCR) Coordinator is the person who is responsible for assuring that the institution fosters a research environment that promotes the responsible conduct of research and discourages research misconduct. At LeadingAge the RCR Coordinator will be the Senior Vice President for Research.

Retaliation for the purpose of this part means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to— a. A good faith allegation of research misconduct; or b. Good faith cooperation with a research misconduct proceeding.

III. Rights and Responsibilities

A. Research Integrity Officer

The VP, Employee Experience will serve as the Research Integrity Officer (RIO), who will have primary responsibility for implementation of this policy. The RIO's

responsibilities in coordination with the COO and VP, Risk Management & Compliance include the following:

- Receive allegations of research misconduct and assess each allegation to determine whether it warrants an inquiry;
- Sequester research data and evidence pertinent to the allegation of research misconduct and maintain it securely;
- Provide confidentiality to those involved in the research misconduct proceeding;
- Notify the respondent and provide opportunities for him/her to review/comment/respond to allegations, evidence, and committee reports;
- Inform respondents, complainants, and witnesses of the procedural steps in the research misconduct proceeding;
- Oversee the Responsible Conduct of Research Committee, ensure that there is expertise appropriate to carry out a thorough and authoritative evaluation of the evidence and no person with an unresolved personal, professional, or financial conflict of interest is involved in the research misconduct proceeding;
- Take steps to protect or restore the positions and reputations of good faith complainants, witnesses, and committee members and counter potential or actual retaliation against them by respondents or other institutional members; and
- Notify any relevant oversight bodies and maintain records of the research misconduct proceeding.

B. **Complainant**

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with the inquiry and investigation. Generally, the complainant will be interviewed at the inquiry stage and during an investigation. On the basis of case-by-case determinations, LeadingAge may also provide to the complainant for comment: (1) relevant portions of the inquiry report; and (2) the draft investigation report or relevant portions of it.

C. **Respondent**

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry and investigation.

The respondent is entitled to:

- A good faith effort from the RIO to notify the respondent in writing at the time of or before beginning an inquiry;
- An opportunity to comment on the inquiry report and have his/her comments attached to the report;
- Be notified of the outcome of the inquiry, and receive a copy of the inquiry report that includes a copy of, or refers to this policy;
- Be notified in writing of the allegations to be investigated, if any, before the investigation begins, and be notified of any new allegations;
- Be interviewed during the investigation;
- Have interviewed during the investigation any witness identified by the respondent as having information on relevant aspects of the investigation; and
- Receive a copy of the draft investigation report and a copy of, or supervised access to, the evidence on which the report is based.

- The respondent should be given the opportunity to admit that the allegations are valid and that they committed research misconduct. If an admission is made, the review may be terminated if LeadingAge accepts of the admission and any proposed settlement.

D. **Deciding Official**

The President & CEO (Deciding Official) will receive the inquiry report and after consulting with the RIO and Responsible Conduct of Research Committee members, decide whether an investigation is warranted. If it is found that an investigation is not warranted, the documentation of the inquiry will be retained for at least 7 years after termination of the inquiry. The DO will receive the investigation report and, after consulting with the RIO and Responsible Conduct of Research Committee members, decide the extent to which LeadingAge accepts the findings of the investigation and, if research misconduct is found, decide what, if any, institutional administrative actions are appropriate.

IV. General Policies and Principles

A. **Responsibility to Report Misconduct**

All LeadingAge community members will report observed, suspected, or apparent research misconduct to the RIO. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, theythey may meet with or contact the RIO at 202- 508-1216 to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically.

B. **Cooperation with Research Misconduct Proceedings**

Community members will cooperate with the RIO and other committee members in the review of allegations and the conduct of inquiries and investigations. Community members, including respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other institutional officials.

C. **Confidentiality**

The RIO shall limit disclosure of the identity of respondents and complainants to those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and, except as otherwise prescribed by law, limit the disclosure of any records or evidence from which research subjects might be identified to those who need to know in order to carry out a research misconduct proceeding. LeadingAge may also provide confidentiality for witnesses when circumstances indicate that the witnesses may be harassed or otherwise need protection.

D. **Protecting complainants, witnesses, and committee members**

Community members may not retaliate in any way against complainants, witnesses, or committee members. Community members should immediately report any alleged or apparent retaliation against complainants, witnesses or committee members to the RIO.

E. **Protecting the Respondent**

The RIO and other committee members shall make all reasonable and practical efforts to

protect or restore the reputation of persons alleged to have engaged in research misconduct, but against whom no finding of research misconduct is made during the research misconduct proceeding, the RIO is responsible for ensuring that respondents receive all the notices and opportunities provided for in this policy. Respondents may, at the Respondent's expense, consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal adviser to interviews or meetings on the case. If a personal advisor or legal counsel is present, they may advise the Respondent and may observe, but not participate in, the proceedings.

F. **Interim Administrative Actions**

Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the externally supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and the appropriate oversight body, take action to protect against any such threat.

V. CONDUCTING THE ASSESSMENT AND INQUIRY

A. **Assessment of Allegations**

Upon receiving an allegation of research misconduct, the RIO will immediately assess the allegation to determine whether it is credible and specific enough that potential evidence may be identified, and whether the allegation falls within the definition of research misconduct. The assessment period should be brief, preferably concluded within a week. The RIO shall, on or before the date on which the respondent is notified of the allegation, obtain custody of, inventory, and sequester all research records and evidence needed to conduct the research misconduct proceeding.

B. **Initiation and Purpose of the Inquiry**

If the RIO determines that the criteria for an inquiry are met, he will immediately initiate the inquiry process in coordination with the COO and VP, Risk Management & Compliance. The purpose of the inquiry is to conduct an initial review of the available evidence to determine whether to conduct an investigation.

C. **Notice to Respondent; Sequestration of Research Records**

At the time of or before beginning an inquiry, the RIO must make a good faith effort to notify the respondent in writing. If the inquiry subsequently identifies additional respondents, they must also be notified in writing. On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, the RIO must take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence and sequester them in a secure manner.

D. **Convening of the Responsible Conduct of Research Committee**

The RIO will convene Responsible Conduct of Research Committee within 10 days of the initiation of the inquiry. The RIO will notify the respondent of the committee

membership in 10 days. If the respondent submits a written objection to any appointed member of the inquiry committee or expert based on bias or conflict of interest within 5 days, the RIO will determine whether to replace the challenged member or expert with a qualified substitute.

E. **Charge to the Committee and First Meeting**

The RIO will provide a statement to the Responsible Conduct of Research Committee that:

1. Sets forth the time for completion of the inquiry;
2. Describes the allegations and any related issues identified during the allegation assessment;
3. Explains that the purpose of the inquiry is to conduct an initial review of the evidence, including the testimony of the respondent, complainant and key witnesses, to determine only whether an investigation is warranted;
4. Explains that an investigation is warranted if the committee determines: (1) there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct; and, (2) the allegation may have substance, based on the committee's review during the inquiry; and
5. Informs the inquiry committee that they are responsible for preparing or directing the preparation of a written report of the inquiry.

At the committee's first meeting, the RIO will review this charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans, and answer any questions. The RIO will be available throughout the inquiry to advise the committee as needed.

F. **Inquiry Process**

The inquiry committee will normally interview the complainant, the respondent, and key witnesses as well as examining relevant research records and materials. Then the inquiry committee will evaluate the evidence, including the testimony obtained during the inquiry. After consultation with the RIO, the committee members will decide whether an investigation is warranted. The scope of the inquiry does not normally include deciding whether misconduct definitely occurred. However, if an admission of research misconduct is made by the respondent, misconduct may be determined at the inquiry stage if all relevant issues are resolved.

G. **Time for Completion**

The inquiry, including preparation of the final inquiry report and the decision of the DO on whether an investigation is warranted, must be completed within 60 calendar days of initiation of the inquiry, unless the RIO determines that circumstances clearly warrant a longer period. The respondent will be notified of the extension.

VI. The Inquiry Report

A. **Elements of the Inquiry Report**

A written inquiry report must be prepared that includes the following information: (1) the name and position of the respondent; (2) a description of the allegations of research

misconduct; (3) the support for the research; (4) the basis for recommending or not recommending that the allegations warrant an investigation; and (5) any comments on the draft report by the respondent or complainant. Modifications should be made as appropriate in consultation with the RIO and the Responsible Conduct of Research Committee.

B. **Notification to the Respondent and Opportunity to Comment**

The RIO shall notify the respondent whether the inquiry found an investigation to be warranted, include a copy of the draft inquiry report for comment within 14 days, and include a copy of this policy. Any comments that are submitted by the respondent or complainant will be attached to the final inquiry report. Based on the comments, the Responsible Conduct of Research Committee may revise the draft report as appropriate and prepare it in final form. The committee will deliver the final report to the RIO.

C. **Institutional Decision and Notification**

1. Decision by Deciding Official

The RIO will transmit the final report and any comments to the DO, who will determine in writing whether an investigation is warranted. The inquiry is completed when the DO makes this determination, which will be made within 60 days of the first meeting of the inquiry committee. Any extension of this period will be based on good cause.

2. Documentation of Decision Not to Investigate

If the DO decides that an investigation is not warranted, the RIO shall secure and maintain for 7 years after the termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by relevant oversight bodies of the reasons why an investigation was not conducted.

VII. Conducting the Investigation

A. **Initiation and Purpose**

The investigation must begin within 30 calendar days after the determination by the DO that an investigation is warranted. The purpose of the investigation is to develop a factual record by exploring the allegations in detail and examining the evidence in depth, leading to recommended findings on whether research misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegations. The findings of the investigation must be set forth in an investigation report.

B. **Notifying Respondent and Oversight Bodies; Sequestration of Research Records**

On or before the date on which the investigation begins, the RIO must notify the respondent in writing of the allegations to be investigated. The RIO must also give the respondent written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notice of the investigation. Depending on the source of the

funding, he may also be required to notify a relevant oversight body of the decision to begin the investigation and provide them with a copy of the inquiry report. The RIO will, prior to notifying respondent of the allegations, take steps to obtain custody of and sequester in a secure manner all research records and evidence that were not previously sequestered during the inquiry.

C. **Convening of the Responsible Conduct of Research Committee as the Investigation Committee**

The RIO will inform the Responsible Conduct of Research Committee within 10 days of the notification to the respondent that an investigation is planned or as soon thereafter as practicable. The investigation committee consists of individuals who do not have unresolved conflicts of interest with those involved with the investigation and should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the respondent and complainant and conduct the investigation.

D. **Charge to the Committee and the First Meeting**

1. Charge to the Committee

The RIO in coordination with the COO and VP, Risk Management & Compliance (or designee) will define the subject matter of the investigation in a written charge to the committee that:

- Describes the allegations and related issues identified during the inquiry;
- Identifies the respondent;
- Informs the committee that it must conduct the investigation as prescribed in this policy;
- Defines research misconduct;
- Informs the committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, the type and extent of it and who was responsible;
- Informs the committee that in order to determine that the respondent committed research misconduct it must find that a preponderance of the evidence establishes that research misconduct, as defined in this policy, occurred and that the respondent committed the research misconduct intentionally, knowingly, or recklessly; and
- Informs the committee that it must prepare or direct the preparation of a written investigation report.
- During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the committee will notify the Research Integrity Officer, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

2. First Meeting

The RIO will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation committee will be provided with a copy of this policy and The RIO will be available throughout the investigation to advise the committee as needed.

E. **Investigation Process**

The investigation process will be initiated within 30 days of the completion of the inquiry, if findings from that inquiry provide a sufficient basis for conducting an investigation.

The investigation committee and the RIO must:

- Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all relevant research records and evidence;
- Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;
- Interview each respondent, complainant, and anyone else who it has deemed relevant and in possession of information regarding the investigation; and
- Pursue significant issues and leads discovered that are determined relevant to the investigation, including evidence of any additional instances of possible research misconduct, and continue the investigation to completion.

F. **Time for Completion**

The investigation is to be completed within 120 days, including conducting the investigation, preparing the report of findings, and providing the draft report for However, if the RIO determines that the investigation will not be completed within this 120-day period, he may grant an extension.

VIII. The Investigation Report

A. **Elements of the Investigation Report**

The investigation committee and the RIO are responsible for preparing a written draft report of the investigation that:

- Describes the nature of the allegation of research misconduct, including identification of the respondent;
- Describes and documents the research's support;
- Describes the specific allegations of research misconduct considered in the investigation;
- Includes a copy of this policy;
- Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and

- Includes a statement of findings for each allegation of research misconduct identified during the investigation. Each statement of findings must: (a) identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (b) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the respondent, including any effort by respondent to establish by a preponderance of the evidence that they did not engage in research misconduct because of honest error or a difference of opinion; (c) identify the specific funding support; (d) identify whether any publications need correction or retraction; (e) identify the person(s) responsible for the misconduct; and (f) list any other current or pending financial support that the respondent has for his or her research.

B. **Comments on the Draft Report and Access to Evidence**

1. Respondent - The RIO must give the respondent a copy of the draft investigation report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed 14 days from the date they received the draft report to submit comments to the RIO. The respondent's comments must be included and considered in the final report.
2. Complainant - LeadingAge may provide the complainant a copy of the draft investigation report, or relevant portions of it, for comment. If the LeadingAge chooses to do this, the complainant's comments must be submitted within 30 days of the date on which they received the draft report and the comments must be included and considered in the final report.
3. Confidentiality - In distributing the draft report to the respondent and complainant, the RIO will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. For example, the RIO may require that the recipient sign a confidentiality agreement.

C. **Decision by Deciding Official**

The RIO will assist the investigation committee in finalizing the draft investigation report, including ensuring that the respondent's and complainant's comments are included and considered, and transmit the final investigation report to the DO, who will determine in writing: (1) whether LeadingAge accepts the investigation report, its findings, and the recommended institutional actions; and (2) the appropriate institutional actions in response to the accepted findings of research misconduct. If this determination varies from the findings of the investigation committee, the DO will, as part of his written determination, explain in detail the basis for rendering a decision different from the findings of the investigation committee. Alternatively, the DO may return the report to the investigation committee with a request for further fact-finding or analysis.
When a final decision on the case has been reached, the RIO will notify both the respondent and the complainant in writing. The DO will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the

respondent in the work, or other parties should be notified of the outcome of the case. The RIO is responsible for ensuring compliance with all notification requirements of funding agencies.

Appeals

The Respondent may appeal the findings and the decision to the DO. Grounds for appeal are limited to allegations of material and substantive procedural error in the process afforded the respondent. Any appeal must be filed, in writing and describing the alleged procedural error, with the Responsible Conduct of Research Committee within ten (10) days after the Respondent has received the final decision by the DO. Appeals must be completed within 120 days of its filing. If the appeal cannot be completed within 120 days, LeadingAge may request an extension of time from the oversight body.

IX. Completion of Cases

Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently.

X. Institutional Administrative Actions

If the DO determines that research misconduct is substantiated by the findings, he will decide on the appropriate actions to be taken, after consultation with the RIO and in in compliance with LeadingAge's fair employment practices and policies. The administrative actions may include:

- Withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found;
- Removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment;
- Restitution of funds to the funding source grant or agency as appropriate; and
- Other action appropriate to the research misconduct.

XI. Other Considerations

A. **Termination or Resignation Prior to Completing Inquiry or Investigation**

The termination of the respondent's employment with LeadingAge, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the research misconduct proceeding or otherwise limit any of LeadingAge's responsibilities. If the respondent refuses to participate in the process after resignation, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion concerning the allegations, noting in the report the respondent's failure to cooperate and its effect on the evidence.

B. **Restoration of the Respondent's Reputation**

Following a final finding of no research misconduct, the RIO must, at the request of the

respondent, undertake all reasonable and practical efforts to restore the respondent's reputation.

C. **Protection of the Complainant, Witnesses and Committee Members**

During the research misconduct proceeding and upon its completion the RIO in coordination with the VP, Risk Management & Compliance must undertake all reasonable and practical efforts to protect the position and reputation of, or to counter potential or actual retaliation against, any complainant who made allegations of research misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the research misconduct proceeding. The DO will determine, after consulting with the RIO, and with the complainant, witnesses, or committee members, what steps, if any, are needed to restore their respective positions or reputations or to counter potential or actual retaliation against them.

D. **Allegations Not Made in Good Faith**

If relevant, the DO will determine whether the complainant's allegations of research misconduct were made in good faith, or whether a witness or committee member acted in good faith. If the DO determines that there was an absence of good faith they will determine whether any administrative action should be taken against the person who failed to act in good faith.